

## **Former State Representative Jim Howell Insurance Committee Testimony**

*Oct. 4, 2011*

Good Morning. I am Jim Howell, the father of a catastrophically injured son. I am also former State Representative Jim Howell. I served as a member of this body for 6 years as a Republican and also as chairman of Judiciary. My wife has expressed how I feel as a parent. I am not here to speak to you as a father; rather I am speaking to you as someone with legislative experience.

I am not here to challenge your intelligence, or to be confrontational. I know you are under pressure and the information you are being provided is contradictory. The first thing to think about is that you are here in the public interest, and not in the special interest. You also need to know that anything you do to the no fault act will, like a game of policy wack-a-mole, have consequences on uninsured care, Medicaid payments, and Blue Cross premiums.

When I was a new state representative I was not aware of the possibility of attaching an appropriation to a policy bill that would prevent the constitutional right of the people to a referendum. There is an appropriation in this bill. During the time I served in the Legislature we passed a bill that changed the concealed weapons law of our state, and those opposed to the change threatened a referendum. At the last minute, an appropriation was included in the bill and the Supreme Court held<sup>1</sup> that it therefore was not the subject of a referendum. This bill contains an identical ploy. This \$50,000 appropriation is not being used to implement the changes as the bill states; it is rather being used to do away with the right of referendum. If an appropriation is necessary, it should be done in a

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<sup>1</sup> See *Michigan United Conservation Clubs v. Secretary of State*, 464 Mich 359 (2001)



separate bill and the constitutional right of referendum of the people on policy issues preserved.

I know areas of the Act that could be amended that would lower premiums and improve our system. However, there is too much of a feeding frenzy atmosphere for that to succeed and my experience leads me to believe that opening up the entire no fault act will lead to mischief.

This is what the bill will do and some of the policy implications:

1. The first paragraph starts by immunizing (protecting) the insurance companies from liability for negligence in advising insured's on the amount of no fault insurance they should purchase.
  - a. Many of the 1973 monetary levels have remained the same: amount of liability insurance required, substituted service payment, and funeral expenses. You can sue in tort if you have expenses that exceed your selected level of coverage, but the problem is that even if you have a responsible party they will not have the coverage necessary to come close to reimbursing you for your loss.
2. Because there are different levels of coverage, priority, or which insurance policy applies, becomes a problem:
  - a. If you are in your employer's vehicle during the course of employment, you are stuck with whatever the employer chooses;
  - b. If a motorcyclist or a nonresident, the minimum;
  - c. A passenger or pedestrian without auto coverage, the minimum;
  - d. If you fail to explicitly select a level of coverage (which is probably the result of negligence on the part of your immunized insurance agent), then again, the minimum.



3. There are no mandatory reductions in insurance rates, other than statements that the companies will look at reductions in premiums that vary widely in estimates.
4. The fee schedules shift the burden to other forms of health insurers and this will affect Medicaid levels and health insurance premiums (the wack-a-mole affect). The medical system is complex and interwoven and their financial survival is a societal imperative. Also the schedules will result in some providers leaving the state, an inability to seek treatment outside of the state, or some providers who will refuse treatment as they will not accept the reimbursement rates. There will also be a loss in net jobs.
5. Attendant care of an individual in their home is limited in amount and to 56 hours per week. It is overbroad and does not address abuses, which I believe is more enforcement related than legislative. Many times attendant care of a catastrophically injured person is a 24 hour per day, 7 days a week proposition. This is the case with my son. These limitations will make it financially impossible for a family member to quit working outside of the home and take care of the injured family member.
6. This bill excludes or severely punishes motorcyclist not wearing a helmet. I am not in favor of repealing the helmet law; however, I am also not in favor of treating motorcyclists unfairly. While this policy recognizes that helmets reduce the potential for head injuries, it is unfair where there was no head injury related to the accident and does not treat motorcyclists the same as individuals who fail to wear their seat belts. Justification for both policies lies in the increased level of injuries that result.



7. The provisions dealing with tort liability are at best unworkable, and much too specific. (See also *Kreiner*<sup>2</sup> and *McCormick*<sup>3</sup>). This is simply an attempt to gain more support for this bill from those who would be willing to give up the PIP benefits for the ability to sue in tort.
8. The system currently works because the risk is spread over a large number of people. With PIP Choice most will select the minimum, and most of those will be the poor, and the young, the very people who are so heavily represented in the serious and catastrophic category of injuries. It will also result in increasing the premiums for those who wish higher limits.
9. Some state that allowing choice will result in lower premiums, especially in Detroit, with more people buying the mandatory insurance. Most of the uninsured will not be affected by this logic because they cannot afford insurance in any instance. Lowering the Detroit insurance rate per car by 15% will still make it unaffordable. Detroit rates are not primarily driven by the no fault act. They are driven by societal issues that do not involve car insurance rates. I assure you that the unemployment rate has more to do with the percentage of Michigan residents not purchasing the mandatory insurance than does anything that this bill seeks to correct.
10. Another statement that has once again been given life is that the system will go broke. This same argument has been ongoing since at least 1990. There is not accounting, actuarial, or other evidence to back up this contention. In fact in 1998 there was such an excess in the MCCA that each person was given a \$150 rebate. The soundness of the fund does depend on investments. However, even the very serious downturn that we are going

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<sup>2</sup> *Kreiner v. Fisher*, 471 Mich 109 (2004)

<sup>3</sup> *McCormick v. Carrier*, 487 Mich 180 (2010)





through today has not made the MCCA insolvent, nor has it raised insurance rates unsustainably.

I have had a long and varied career. I have been a police officer and policed auto accidents. As an attorney I have represented insurance companies and injured people. As a state representative I have set policy. In era of term limits the no fault issue keeps reappearing because of the fact that the newly elected, having no history with the no fault issue, are again approached. Most of you do not have experience with the no fault act. My most profound experience I would trade this minute for my son to be the way he was. However, I cannot do that. Rather, I speak for your sons, daughters, grandchildren, and possibly yourselves. Unlike the lottery, this is a prize no one wants to win. Do the right thing. Examine the bill for yourself, and think through the broader policy implications beyond this bill. In the end, I believe that will lead you to the right path for our state.

Mr. Chairman, if there are any questions from you or any member of the committee, I would be happy to entertain them.

